

**AGREEMENT BETWEEN
CITY OF SUNNYVALE AND SUNNYVALE SWIM CLUB**

THIS AGREEMENT dated _____ is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and SUNNYVALE SWIM CLUB ("CLUB"), a non-profit organization.

WHEREAS the CITY desires to support independent organizations providing services beneficial to the Community; and

WHEREAS CLUB wishes to provide non-profit services to Sunnyvale youth not otherwise offered or duplicated by the City of Sunnyvale; and

WHEREAS CLUB wishes to use various facilities maintained by the City of Sunnyvale for that purpose on a priority basis; and at a cost reduced from that dictated by established CITY facility rental rates, and;

NOW THEREFORE, in accordance with the City's Relationships with Outside Groups Policy, the CITY OF SUNNYVALE and SUNNYVALE SWIM CLUB enter into this agreement.

1. Obligations of CITY OF SUNNYVALE

CITY shall provide CLUB first priority reservation, after CITY scheduled activities and consistent with CITY policy on facility use, of the swimming pool and associated locker rooms and office at Sunnyvale Middle School only for the purposes of practices, meets and regular CLUB activities.

CITY shall make priority reservations for the Sunnyvale Middle School pool by January 1 of the prior year and shall notify CLUB of its availability. Any changes in the availability of the facilities compared to the prior year will be noted by CITY and shared with CLUB. Any reservation for a facility that is not needed by the CLUB will be released and made available for public use.

CITY shall charge CLUB on the 15th of each month for the previous month's permits.

CITY shall provide year-round use of storage space at the Sunnyvale Middle School Pool (100 square feet) at no charge to CLUB.

CITY shall notify CLUB if permitted facilities are or will need to be closed for any reason during the season, and attempt to accommodate the CLUB provided that alternate facilities are available.

CITY shall list CLUB contact information in the Department of Parks and Recreation Activity Guide.

CITY shall provide CLUB up to 6 keys to each of the facilities that they have reserved.

2. Obligations of SUNNYVALE SWIM CLUB

SUNNYVALE SWIM CLUB shall provide all activities and programs associated with the planning, organizing, scheduling and hosting of CLUB swimming meets, practices and associated activities at no cost to the City.

CLUB shall comply with all CITY rental use policies and leave facilities in a condition that is the same as or better than they found it after each day's use.

CLUB shall make all special requests in writing, including but not limited to, requests for additional storage space, improvements or modifications of any kind to CITY facilities and the placement of banners advertising CLUB activities.

CLUB shall provide written notice to CITY 30 days in advance for any requested changes in reservation times.

CLUB shall repair, replace or pay for damage to City facilities or equipment furnished by CITY, at the discretion of the CITY, if damage occurred during use by CLUB.

CLUB shall provide rental fees to use the Sunnyvale Middle School Pool/locker room/office at three dollars (\$3) per hour. This fee will be reviewed annually and revised if warranted.

CLUB shall provide payment to the CITY within two weeks of receipt of the invoice. CLUB shall provide rental fees for the use of all facilities outside of this agreement according to the CITY's Facility Rental Rate Schedule and shall be made directly with reservations staff at the time the reservation is made.

CLUB shall be responsible for storage, care, custody or control of equipment, materials or furnishings owned by CLUB.

CLUB shall provide proof of non-profit status, and shall remain non-profit during the life of this agreement.

CLUB shall maintain a membership of at least 51% Sunnyvale residents for both members and Board of Directors. CLUB shall provide CITY with a roster for that season, noting the residency of every member and board

member, each year no later than March 1. A request for a special exception to this requirement must be submitted in writing to City for approval if Sunnyvale residency of membership is below 51%.

CLUB shall reimburse cost to CITY to replace keys and re-key facilities under the use of CLUB, when necessary for security purposes.

CLUB understands provision of termination as detailed in section 12c.

3. Conflicts of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement CLUB shall not accept employment or an obligation which is inconsistent or incompatible with CLUB obligations under this Agreement.

4. Compliance with Laws

a) SUNNYVALE SWIM CLUB shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, gender, age (persons 40 years of age or older), disability, national origin, or any other basis to the extent prohibited by federal, state or local law.

b) SUNNYVALE SWIM CLUB shall comply with all federal, state, county and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting performance of the Agreement.

5. Indemnity

SUNNYVALE SWIM CLUB agrees to indemnify, defend and hold harmless CITY, its officers and employees from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees in connection with any injury or damage to persons or property arising out of or in any way connected with the act, omission or negligence of CLUB, its officers, employees, agents, CLUB subgroups or any officer, agent or employee thereof in relation to CLUB's performance under this Agreement.

6. Insurance

SUNNYVALE SWIM CLUB shall, at own cost, take out and maintain without interruption during the life of this Agreement in such form and with a company or companies satisfactory to the CITY policies of the following types of insurance:

(a) Combined single limit coverage applying to bodily and personal injury liability, including liability for death, and property damage, or a combination thereof, in an amount not less than One Million Dollars (\$1,000,000) providing coverage on an "occurrence" basis and not an "accident" basis; provided, however, as follows:

- (1) CITY shall be named as an additional insured in all insurance policies;
- (2) A contractual liability endorsement shall be included in each insurance policy, extending coverage to include liability assumed under paragraph 5 above; and,

(b) Worker's compensation insurance and employer's liability insurance for all employees of Licensee.

7. CITY OF SUNNYVALE Representative

The Director of Sunnyvale Parks and Recreation or his/her designee shall represent CITY as the City Manager's authorized representative in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

8. SUNNYVALE SWIM CLUB Representative

The President of CLUB shall represent CLUB in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of CLUB pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the CLUB representative.

9. Notices

All notices required by this Agreement shall be in writing, and shall be personally delivered, sent by first class mail with postage prepaid, or by commercial courier, addressed as follows:

To CITY:

City Manager
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707
(408) 730-7480

To CLUB: Leonard Spelt, President
SUNNYVALE SWIM CLUB
1534 Wisteria Ct.
Los Altos, CA 94024
(650) 968-8887

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation or a telephone conversation or an original of a facsimile transmission must be sent by first class mail, by commercial carrier, or hand-delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

10. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

11. Duration of Agreement

This Agreement shall continue until such time as terminated in accordance with section 12 below.

12. Termination

(a) If SUNNYVALE SWIM CLUB defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CLUB.

(b) Without limitation to such rights or remedies as CITY shall otherwise have by law, either party shall have the right to terminate this Agreement for any reason upon ninety (90) days' written notice to the other party.

(c) CITY reserves the right to terminate this agreement at any time and without prior notice. SUNNYVALE SWIM CLUB understands that Sunnyvale Elementary School District("SESD"), not the CITY, is the owner of the Sunnyvale Middle School Pool, and that CITY's agreement with the SESD is predicated on the CITY's own use of the pool for CITY programs, not that of the CLUB. Should the CITY or the SESD's needs change resulting in a change to,

or termination of the CITY/SESD agreement, no guarantees are made to the CLUB in regard to continued use of the Sunnyvale Middle School Pool.

13. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

14. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

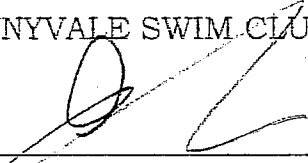
City Clerk

By _____
City Manager Date

APPROVED AS TO FORM:

SUNNYVALE SWIM CLUB ("CLUB")

City Attorney

By  _____
Leonard Spelt Date
President